

1954

Feb. 12

Mr. Henry C. Waldo, Chairman  
Timber Tax Study Committee  
Manchester, New Hampshire

Dear Mr. Waldo:

Under date of December 29, 1953 you have asked me certain questions with respect to the taxation of growing wood and timber. I give my answers herewith.

1. You asked me, first, whether the provisions of R. L. c. 72-A, s. 22 constitute a legal contract between a State and the towns which may not be abrogated by the General Court. This question is answered in the negative. The section does not constitute "contract" in the legal sense; there are no signatory parties, nor is there any consideration passing. The section constitutes, simply, a general law. And the power of the Legislature to repeal a law cannot be abrogated or limited in any way except by constitutional provision. The law has been stated as follows by a leading authority:

"The legislature has the power to amend existing legislation in any manner not inconsistent with constitutional limitations thereon. A legislature cannot limit the power of amendment of a subsequent legislature, either as to the extent or manner of its exercise . . . ." 1 Sutherland, Statutory Construction, §. 1902.

Nothing in this opinion is intended to deal with the question whether, in the legislative processes leading up to the enactment of s. 22, the Representatives of the towns may or may not have demanded the assurance set forth in said section before lending their support to the entire act. Such is a moral question; with respect to the legal question, I restate the fact that the power of the Legislature to repeal or amend the section is absolute, save for constitutional limitations generally applicable.

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2. You inquire next whether the yield tax may be made a lien upon the realty from which the timber subject to the tax is severed. I find no statements of law precisely in point; it is, however, my opinion that the tax may be made a lien upon the land irrespective of the fact that the "owner" of the timber for tax purposes under R. L. c. 79-A is not the owner of the land.

3. While no judicial expression dealing precisely with the matter of the exemption of forest land from taxation has been found, it is well established that the Legislature has broad power in the selection of property for taxation and exemption. The authority of the Legislature in this regard is supreme, the Court has said, (Opinion of the Justices, 4 N. H. 568, 570), subject only to the finding of some rational basis of distinction. The interest which the public has in the preservation of forest resources (Opinion of the Justices, 84 N. H. 559, 571-573) is sufficient, it would appear, to afford a just basis upon which the Legislature may validly distinguish between forest land and non-forest land, exempting the former from taxation to which the latter is subject.

4. Little is more plainly settled in the law/<sup>than</sup> that, a class of property having been declared to be taxable, all property in such class must be taxed upon the same basis in order to meet the constitutional requirement of uniformity and proportionality in the laying of taxes.

"By an unbroken line of decisions in this state . . . it has been conclusively settled that the constitutional rule of equality in taxation requires that throughout the same taxing district the same tax shall be laid upon the same amount of property, 'so that each man's taxable property shall bear its due portion of the tax according to value'".  
Opinion of the Justices, 70 N. H. 533, 533.

In your fourth question you inquire if it would be constitutional for the General Court to enact legislation providing a uniform per acre tax on land. In view of the foregoing, the answer must, of course, be in the negative.

5. With regard to the fifth question, let me first advise that the Legislature may constitutionally direct the State Tax Commission to collect the yield tax — and this is true even though the nature of such tax as a local tax be retained. (Opinion of the Justices, 95 N. H. 544). Assuming such collection, you inquire whether the tax so collected can be reimbursed to the various towns — (a) either as a proportionate part of the whole on the ratio of the valuation of standing wood and timber in the towns is to the state's total — or — (b) rebate to the towns to the extent of their annual tax liens with the balance being retained to apply against the so-called revolving fund.

Mr. Henry C. Waldo, Chairman  
Tobacco Tax Study Committee

February 12, 1954

It seems fairly clear that if the yield tax remains a local tax, return of the same to the towns ought to be in the same amount as collected from each town, less only the cost of administration. Such is the procedure followed with respect to the tax on income from interests and dividends. R. L. c. 73.

But if the tax be made a state tax, it is my view that either of the forms of distribution suggested in your question may readily be adopted. I base my decision in this regard upon the decision found in Salmon of the Indians, 84 N. H. 559, 577-582. Whether or not the making of the yield tax a state tax would be contrary to existing statutory provisions need not be answered at this time. I invite your attention to R. L. c. 79 (Tobacco Tax) s. 19 which reads as follows:

"While this chapter remains in effect, no direct state tax shall be levied on the cities and towns."

If your committee be actively considering making yield tax a state tax, we would be pleased, at your request, to consider whether the section quoted just above is pertinent.

6. Your sixth inquiry raises the question whether it would be possible to require the towns to absorb some part of such funds as might be due them on the basis of their tax less sustained as a result of the exemption from taxation of standing wood and timber. You advise that there are before you proposals which would gradually eliminate, if not eliminate in full, towns from receiving monies out of the state treasury fund. The question may be answered in this fashion: The Legislature might eliminate standing timber, or the act of severance, from taxation entirely without in any way reimbursing the towns for the loss of revenue sustained as a result of such elimination. Reimbursement is an aid which the Legislature may grant or withhold at its pleasure. If reimbursement is to be made, the Legislature may reimburse in whole or in part, according to such formula as it may see fit to apply. Your sixth inquiry is answered, then, in the affirmative.

Very truly yours,

Warren E. Waters  
Deputy Attorney General